

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9384 of 1997

and

SPECIAL CIVIL APPLICATION No 9386 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

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PATEL POLA MEGHA PATEL

Versus

K S RANA

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Appearance:

MR HARIN P RAVAL for Petitioner

DS AFF.NOT FILED (R) for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

MR YS LAKHANI for Respondent No. 3

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/08/98

COMMON ORAL JUDGEMENT

These petitions under Article 226 of the Constitution challenge the judgements and orders dated 20.12.1997 passed by the Urban Land Tribunal in Appeal Nos. 21 and 26 of 1997 setting aside the order dated 9.4.1997 passed by the Competent Authority, Rajkot in respect of the form filed by the petitioner herein and

particularly in respect of Survey No. 80 and further directing the Competent Authority to hear respondent No. 3 and pass a fresh order, and also setting aside the order dated 18.6.1997 passed by the Competent Authority.

2. Since both the petitions are between the same parties and common questions of law arise, the petitions have been heard together and are being disposed of this common order.

3. The facts leading to filing of the petitions, as averred by the petitioner, are as under :-

The petitioner is an agriculturist residing at village Raiya, Taluka & District Rajkot. The petitioner was having various lands bearing Survey Nos. 11/1, 80, 256 and 259/1 and one residential house totally admeasuring about 97,764.44 sq.mtrs. in Rajkot Urban Agglomeration.

The petitioner and respondent No. 3 herein entered into an agreement to sell in respect of 8 Acres of land in Survey No. 80 of village Raiya, Taluka & District Rajkot. Respondent No. 3 did not fulfill his part of the obligation and did not make payment as per the terms and conditions of the aforesaid agreement. On 24.5.1980, the petitioner sent a registered notice to respondent No. 3 through his lawyer stating that the agreement of sale dated 16.12.1970 was terminated. In the meantime, the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act") came into force and the petitioner filled in form No. 1 under Section 6 of the Act on 6.9.1976. On 3.3.1979 the petitioner and respondent No. 3 filed a joint application under Section 20 of the Act seeking permission for sale of the land. The said application was rejected by the Competent Authority's order dated 30.6.1979. Hence, Special Civil Application No. 1614 of 1980 was filed by respondent No. 3 herein before this Court on 5.11.1979 for challenging the aforesaid order dated 30.6.1979. The above petition came to be dismissed by this Court on 10.9.1980. Against that order of rejection, respondent No. 3 filed Letters Patent Appeal No. 135 of 1982, which also came to be dismissed by the Letters Patent Bench on 13.4.1982, inter alia, on the ground that respondent No. 3 was only an intending purchaser under the agreement of sale executed by the petitioner and, therefore, respondent No. 3 had no locus standi to invoke the powers of the State Government under Section 20 of the Act to exempt the land from operation of the Act as the land did not belong to respondent No.

3.

On 19.12.1990, the Competent Authority passed an order after processing the petitioner's form and held that the petitioner was entitled to have three units totally admeasuring 4599 sq.mtrs. On 31.5.1991, the State Government took the Competent Authority's order dated 19.12.1990 into suo motu revision and directed the petitioner to maintain status quo regarding the land in question. On 3.7.1992, the State Government granted agricultural exemption with respect to Survey No. 80 and Survey No. 11/1 admeasuring 8 Acres and Acres 3-04 Gunthas respectively. On 12.12.1992, the State Government passed a revised order under Section 20 of the Act in respect of the aforesaid lands.

In the meantime, against the aforesaid order dated 19.12.1990 (Annexure "G") passed by the Competent Authority, respondent No. 3 preferred Special Civil Application No. 3571 of 1991 before this Court. The said petition was dismissed on the ground that respondent No. 3 had an alternative remedy to file an appeal before the Tribunal with a clarification that this Court was not deciding the dispute about the locus standi of respondent No. 3 and that that was also a matter to be decided by the appellate authority. Respondent No. 3 accordingly filed Appeal No. (Rajkot)-17 of 1993. Respondent No. 3 also preferred Appeal No. 48 of 1995 against the order dated 8.5.1995 passed by the Competent Authority sanctioning the scheme under Section 21 of the Act for construction of dwelling units for weaker sections of the society which scheme was proposed by the petitioner. Both the aforesaid appeals i.e. 17/93 and 48/95 were heard and decided by the Tribunal by its judgement and order dated 29.8.1996 (Annexure "O"). It was held by the Tribunal in the aforesaid judgment and order that respondent No. 3 had no locus standi to file the aforesaid appeals, as he was merely an intending purchaser and had no interest in the land and that this issue was also earlier decided by this Court in Letters Patent Appeal No. 135 of 1982. However, after giving that finding, the Tribunal remanded the matter to the Competent Authority only for the limited purpose of examining whether the Competent Authority's order was in conformity with the orders passed by the State Government earlier in respect of the aforesaid lands of the petitioner under Section 34 of the Act. Pursuant to the aforesaid order of remand, the Competent Authority passed order dated 9.4.1997 (Annexure "V"), the Competent Authority passed a further order dated 18.6.1997 revising the scheme under Section 21(1) of the Act.

Respondent No. 3 again preferred appeals before the Tribunal (No. (Rajkot)-21/97 and 26/97) for challenging the aforesaid orders dated 9.4.1997 and 18.6.1997 respectively passed by the Competent Authority. In the aforesaid appeals, the Tribunal sent notice dated 3.10.1997 (Annexure "W") in Appeal No. 21/97 to the petitioner fixing the first hearing on 20.10.1997 for hearing the parties on the questions of locus standi, interim injunction and as to whether the appeal was required to be admitted or not. On 20.10.1997, the petitioner appeared before the Tribunal and prayed for time. Hence, the next hearing was fixed on 17.11.1997. In the notice dated 21.10.1997 (Annexure "Y") in Appeal No. 21/97 fixing the date of hearing on 17.11.1997 and also in the notice dated 10.11.1997 in Appeal No. 26/97 fixing the date of hearing on 17.11.1997, it was mentioned that the decision was to be taken as regards the locus standi of respondent No. 3 herein (appellant in Appeal Nos. 21 and 26 of 1997) on the question of interlocutory order and also on the question whether the appeal was required to be admitted or not. On 17.11.1997, the learned advocate for the petitioner could not remain present and believed that the hearing would take place only for the aforesaid three purposes mentioned in the aforesaid notices dated 21.10.1997 and 10.11.1997. In the parawise remarks sent by the Competent Authority (which are referred to in the impugned judgements dated 20.12.1997 of the Tribunal), a specific reference was made to the finding given by this Court on the locus standi of respondent No. 3 and also by the Tribunal in the judgment dated 29.8.1996. However, on 20.12.1997, the Tribunal allowed Appeal Nos. 21 and 26 of 1997 and set aside the orders dated 9.4.1997 and 18.6.1997 in so far as the same concerned Survey No. 80 and directed the Competent Authority to hear respondent No. 3 and pass fresh orders.

The petitioner has filed the present two petitions against the aforesaid judgments and orders dated 20.12.1997 passed by the Tribunal allowing Appeal Nos. 21 and 26 of 1997, mainly on the ground that once the question of locus standi was already determined in the previous proceedings between the same parties, it was not open to the Tribunal to reopen that issue.

4. I have heard Mr Harin Raval for the petitioner and Mr YS Lakhani for respondent No. 3 in both the petitions. While Mr Raval relied on the judgment dated 13.4.1982 of the Letters Patent Bench and the judgment of the Tribunal delivered on 29.8.1996, Mr Lakhani submitted

that there was subsequent correspondence between respondent No. 3 and the Government.

5. Apart from the fact that no such correspondence is on record, any such correspondence cannot derogate from the principle laid down and finding given by this Court in the Letters Patent Appeal and by the Tribunal in its judgement dated 29.8.1996 between the same parties that respondent No. 3 had no locus standi, as he was a mere intending purchaser. Respondent No. 3 has not been able to show that the legal status of respondent No. 3 has improved after the aforesaid judgment of the Letters Patent Bench and the judgment of the Tribunal delivered as recently as in 1996.

6. In view of the order dated 13.4.1982 passed by the Division Bench of this Court in LPA No. 135 of 1982 holding that respondent No. 3 herein was a mere intending purchaser under an agreement to sell and that, therefore, he had no right or interest in the land and in view of the judgment and order dated 29.8.1996 passed by the Urban Land Tribunal in Appeal Nos. 17 of 1993 and 48 of 1996 holding that respondent No. 3 herein had no locus standi to challenge the order passed by the Competent Authority on the form filed by the petitioner herein as the petitioner was a mere intending purchaser under the agreement to sell, the Tribunal could not have entertained the appeals in question filed by respondent No. 3 against the order passed by the Competent Authority in the second round. In the aforesaid judgment dated 29.8.1996, the Tribunal had made certain observations so that the State Government may not be precluded from exercising its power under Section 34 of the Act and the State Government had passed the order dated 3.2.1997 remanding the matter to the Competent Authority for deciding the matter in light of the said order of remand and the Competent Authority decided the matter on 9.4.1997 (Annexure "B") declaring 28,078 sq.mtrs. of land as excess vacant land. In the appeal filed by respondent No. 3 against the aforesaid order dated 9.4.1997 of the Competent Authority (Appeal No. 21/97), it was obviously not open to the Tribunal to go behind the judgment and order which was delivered by the Tribunal on 29.8.1996 in Appeal No. 17/93 nor was it open to the Tribunal to pass an order which would have the effect of setting at nought the decision of the Division Bench in LPA No. 135/82. The Tribunal clearly committed an error apparent on the face of record in holding that respondent No. 3 had locus standi to challenge the order of the Competent Authority and that the Competent Authority should hear respondent No. 3

again while processing the form filed by the petitioner under Section 6 of the Act.

7. The Tribunal committed the same mistake in appeal No. 26/97 against the order dated 18.6.1997 under Section 21(1) of the Act, by overlooking the judgement of the Letters Patent Bench and of the Tribunal in Appeal No. 48 of 1995 which was against the order dated 8.5.1995 sanctioning the original scheme under Section 21(1) of the Act.

8. In view of the above discussion, the judgments and orders passed by the Tribunal on 20.12.1997 in Appeal Nos. 21/97 and 26/97 are quashed and set aside.

9. Since the Tribunal had allowed the appeal on the ground that respondent No. 3 herein should have been heard by the Competent Authority and since it is held that respondent No. 3 had no locus standi in the matter of processing of the form filed by the petitioner under Section 6 of the Act or in the matter of the scheme under Section 21 of the Act, no further orders would have been required to be passed while setting aside the impugned judgment and orders dated 20.12.1997 passed by the Tribunal in Appeal Nos. 21 and 26 of 1997. However, in order to avoid any possible doubt as to whether the Competent Authority had really passed the order dated 9.4.1997 in consonance with the order of remand passed by the State Government on 3.2.1997, it would be just and proper to direct that the order dated 9.4.1997 of the Competent Authority shall not be implemented for a period of two months from today so that the State Government does have an opportunity to consider whether the order of remand was properly complied with by the Competent Authority or not. The petitioner shall, therefore, serve a copy of this order on the State Government within three weeks from today.

3. Rule is made absolute to the aforesaid extent only.

Sd/-

August 11, 1998 (M.S. Shah, J.)